

**SUPREME COURT OF ARKANSAS**

No. CR09-1371

JENNIFER RAMSEY

APPELLANT

**Opinion Delivered** January 14, 2010

MOTION FOR RULE ON CLERK

V.

STATE OF ARKANSAS

APPELLEE

MOTION TREATED AS MOTION  
FOR BELATED APPEAL AND  
GRANTED.

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**PER CURIAM**

Appellant Jennifer Ramsey, by and through her attorney, Dustin D. Dyer, has filed a motion for rule on clerk. We treat the motion as one for belated appeal and grant it.

Ramsey was convicted by a Pulaski County jury of aggravated robbery and theft of property and sentenced to eighteen years' imprisonment. The judgment and commitment order reflecting her conviction and sentence was entered on May 7, 2009. On June 4, 2009, Ramsey filed a timely motion for new trial pursuant to Ark. R. Crim. P. 33.3. The circuit court did not immediately act on the motion, however, and it was deemed denied on July 6, 2009.<sup>1</sup> *See* Ark. R. Crim. P. 33.3(c); Ark. R. App. P.–Crim. 2(b)(1). Ramsey thus had until August 5, 2009, to file her notice of appeal.<sup>2</sup> *See id.*

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<sup>1</sup>The thirtieth day, July 4, 2009, fell on a Saturday, and the time was therefore extended to the following Monday. *See* Ark. R. App. P.–Civ. 9.

<sup>2</sup>Ramsey ultimately filed an untimely notice of appeal on September 14, 2009.



## 2010 Ark. 13

Ramsey argues that she could not have filed a notice of appeal before August 5 because the circuit court had scheduled a hearing on her motion for new trial for August 12, 2009. She further maintains that “once the trial court scheduled the matter outside the deemed-denied date, [she] had no other alternative other than to file a notice of appeal prior to the hearing,” which “would have deprived the trial court of jurisdiction to grant the motion.”

The fallacy of Ramsey’s argument is that by August 12, 2009, the circuit court had *already* lost jurisdiction to consider or grant her motion. See *State v. Boyette*, 362 Ark. 27, 32, 207 S.W.3d 488, 492 (2005) (thirty-day deadline in Rule 33.3(c) is mandatory; a trial court is required to make a determination on a posttrial motion within thirty days or lose jurisdiction); *Harris v. State*, 327 Ark. 14, 935 S.W.2d 568 (1997) (trial court lacked jurisdiction to enter belated order denying appellant’s motion for new trial). Ramsey has thus failed to file a timely notice of appeal from the judgment and commitment order entered on May 7, 2009.

As noted above, Ramsey filed a motion for rule on clerk seeking an order of this court that the clerk lodge and docket the appeal in this case. Relief from the failure to perfect an appeal is provided as part of the appellate procedure granting the right to an appeal. *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). In *McDonald*, we clarified our treatment of motions for rule on clerk and motions for belated appeal in criminal cases:

Where an appeal is not timely perfected, either the party or attorney filing the appeal is at fault, or there is good reason that the appeal was not timely perfected. The party or attorney filing the appeal is therefore faced with two options. First, where the party or attorney filing the appeal is at fault, fault should be admitted by affidavit filed with



2010 Ark. 13

the motion or in the motion itself. There is no advantage in declining to admit fault where fault exists. Second, where the party or attorney believes that there is good reason the appeal was not perfected, the case for good reason can be made in the motion, and this court will decide whether good reason is present.

*Id.* at 116, 146 S.W.3d at 891 (footnote omitted). While this court no longer requires an affidavit admitting fault before we will consider the motion, an attorney should candidly admit fault where he or she has erred and is responsible for the failure to perfect the appeal. *Id.* When it is plain from the motion, affidavits, and record that relief is proper under either rule based on error or good reason, the relief will be granted. *K.L. v. State*, 2009 Ark. 82, 313 S.W.3d 5. If there is attorney error, a copy of the opinion will be forwarded to the Committee on Professional Conduct. *Stevenson v. State*, 375 Ark. 318, 290 S.W.3d 5 (2008).

We find that it is plain from Ramsey's motion that there was error on attorney Dyer's part. We treat Ramsey's motion for rule on clerk as a motion for belated appeal and, pursuant to *Stevenson v. State, supra*, and *McDonald v. State, supra*, grant it and forward a copy of this opinion to the Committee on Professional Conduct.

BOWEN, J., not participating.